

RECEIVED

JUL 20 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Washington, D.C. 20554

In the Matter of:

Implementation of Sections of the
Cable Television Consumer
Protection and Competition Act,

Rate Regulation

MM Docket 92-266

Opposition of Time Warner Entertainment
Company, L.P. to SUR Corporation's Petition
for Reconsideration of Order Deferring
Implementation of Leased Commercial Access Rules

Time Warner Entertainment Company, L.P. ("TWE"),
by its attorneys, and pursuant to § 1.429(f) of the
Commission's rules, respectfully submits this memorandum in
opposition to SUR Corporation's ("SUR") June 21, 1993
Petition for Reconsideration of the Commission's Order which
deferred implementation of its earlier order on rate
regulation, including rate regulations for leased commercial
access. SUR requests that the Commission immediately
implement leased access rate regulation.

No. of Copies rec'd
List A B C D E

0 + 11

Background

In its June 15, 1993 Order, the Commission announced that due to severe resource constraints it was forced to defer the effective date of its cable service rate regulations, adopted pursuant to the Cable Television and Consumer Protection Act of 1992 ("Cable Act of 1992"), from June 21, 1993 until October 1, 1993.

The Commission explicitly recognized in its Order the substantial benefits to be gained from this delay: "In addition, we believe that an additional period of time for implementation of cable service rate regulation will provide franchising authorities and cable operators greater opportunity to ensure a smooth transition to rate regulation. We recognize that rate regulation of cable service imposes significant new obligations on cable operators." 1/ Chairman Quello added that deferment will "allow time for the FCC to act on numerous requests for reconsideration and to establish cost of service standards." 2/

1/ Order in MM Docket No. 92-266, 58 Fed. Reg. 33560 (1993).

2/ Statement of Chairman James H. Quello (June 11, 1993).

Discussion

SUR argues that despite the Commission's budgetary constraints, it can immediately implement leased access rate regulation if it defers adjudication of claims arising thereunder until October, 1993. SUR's Petition for Reconsideration should be denied for several reasons. First, it makes little sense to conduct negotiations over leased access rates until the rules have been clarified. This probably will take a few months while the Commission deals with the more than 50 Petitions for Reconsideration that were filed. Moreover, given that rate regulation of leased access capacity is heavily dependent on the calculation of subscriber rates for nonleased access programming, leased access regulation cannot be carved out and put on a separate track. Finally, SUR will not be harmed by the minor delay entailed in the Commission's

the determination of maximum reasonable rates. This will obviously impact negotiations with SUR. Indeed, in SUR's separate Petition for Reconsideration of the Report and Order (also filed June 21, 1993), it requests that the Commission reexamine how maximum leased commercial access rates are calculated for premium channel services. 3/ At the same time that SUR is suggesting changes in the method of calculating maximum rates, it recognizes the compelling need to have system operators establish maximum rates "before negotiations with potential lessees" commence. 4/ These demands are flatly inconsistent with SUR's contention (Pet. at 4) that nothing it is requesting from the Commission in its Petition for Reconsideration on the rate regulation rules would support deferral of the Commission's leased access rules.

Furthermore, given that rate regulation as a whole is in this state of uncertainty, it is too early to negotiate specific contracts. This is especially so given the distinct possibility that the Commission will issue a

3/ While TWE argues for elimination of the three categories of leased access programming. SUR appears to

clarification order in the near future. In the "other" and home shopping categories of leased access, as the regulations are currently crafted, the formula for determining the implicit fees for channel capacity appears to be based in part on the retail rates to subscribers for the basic and other tiers. Until those rates are effective, the leased access formula is incomplete. Therefore, separating out leased access regulations from the rest of the rate regulations makes no practical sense and is probably unworkable. Certainly, the programmers and operators are not yet in a position to commence meaningful negotiations.

SUR also will not suffer a competitive disadvantage due to the deferred implementation date since all cable programmers seeking leased access capacity for the first time are in the same position. Given the brief deferral at issue SUR has not and cannot affirmatively show that it will suffer serious harm due to the Commission's Order.

Conclusion

For the foregoing reasons, Time Warner respectfully submits that SUR's Petition for Reconsideration should be denied.

Respectfully submitted,

TIME WARNER ENTERTAINMENT
COMPANY, L.P.

She D. Thurnfeld

CERTIFICATE OF SERVICE

I hereby certify that, on July 20, 1993, copies of the foregoing "Opposition of Time Warner Entertainment Compnay, L.P. to SUR Corporation's Petition for Reconsideration of Order Deferring Implementation of Leased Commercial Access Rules" were served by First Class Mail, postage prepaid to the following:

Robert L. Hoegle
Timothy J. Fitzgibbon
Carter, Ledyard & Milburn
1150 I Street, N.W.
Suite 870
Washington, DC 20005

Jerry Parker
Director of Marketing
Superstar Connection
3801 S. Sheridan Road
Tulsa, OK 74145

J. Bruce Irving
Bailey, Hunt, Jones & Busto
Courvoisier Center, Suite 300
501 Bruckell Key drive
Miami, FL 33131-2623

John W. Pestle
Varnum, Riddering, Schmidt & Howlett
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, MI 49501-0352

David B. Gluck
600 Las Colinas Boulevard
Suite 2200
Irving, TX 75039

Robert Weisberg
Mountain Cablevision, Inc.
145 E. 92 Street
New York, NY 10128

Judith L. Neustadter
2200 Main Street, Suite 611
P. O. Box 2252
Wailuku, Maui, Hawaii 96793

Eric E. Breisach
Howard & Howard Attorneys, P.C.
107 W. MICHIGAN Avenue, Suite 400
Kalamazoo, Michigan 49007

William Leventer
Video Data Systems
653 Old Willets Path
Hauppauge. NY 11788

J. Roger Wollenberg
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1420

James A. Penney
Northland Communications Corporation
1201 Third Avenue
Suite 3600
Seattle, WA 98101

Sue D. Blumenfeld
Willkie Farr & Gallagher
Suite 600
1155-21st Street, N.W.
Washington, DC 20036

Thomas L. Robak
Apollo CableVision
13100 Alondra Boulevard
Suite 104
Cerritos, CA 90701

Lex J. Smith
Brown & Bain, P.A.
2901 North Central Avenue
P. O. Box 400
Phoenix, AZ 85001-0400

Ron D. Katznelson
Multichannel Communication Sciences, Inc.
5910 Pacific Center Blvd.
San Diego, CA 92121

Spencer R. Kaitz
California Cable TV Association
4341 Piedmont Avenue
Oakland, CA 94611

Matthew L. Leibowitz
Leibowitz & Spencer
One S.E. Third Avenue
Suite 1450
Miami, FL 33131

Trudi McCollum Foushee
Crown Media, Inc.
One Calleria Tower
13355 Noel Road, Suite 1650
Dallas, TX 75240

Sharon L. Webber
Citizens Communications Center
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001

Robert Nagel
Alaska Cablevision, Inc.
5808 Lake Washington Boulevard
Suite 400
Kirkland, WA 98033

G. H. Ward, III
Sky Cablevision Ltd.
P. O. Box 65
Meridian, Mississippi 39302

David M. Silverman
Paul Glist
Cole Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

Charles S. Walsh
Fleischman and Walsh
1400 16th Street, N.W.
Washington, DC 20036

Stephen R. Ross
Ross & Hardies
888 16th Street, N.W.
3rd Floor
Washington, DC 20006

Brenda L. Fox
Dow Lohnes & Albertson
1255 23rd Street, N.W.
Washington, DC 20037

Stephen R. Effros
President
Community Antenna Television Association, Inc.
3950 Chain Bridge Road
Fairfax, VA 22030

Henry A. Solomon
Haley Bader & Potts
4350 N. Fairfax Drive
Suite 900
Arlington, VA 22203

Robert J. Sachs
Senior Vice President

Daniel L. Brenner
National Cable Television Association
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

Kathleen L. Franco
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Michael E. Glover
1710 H Street, N.W.
Washington, DC 20006

Gardner F. Gillespie
Jacqueline P. Cleary
Hogan & Hartson
555-13th Street, N.W.
Washington, DC 20004-1109

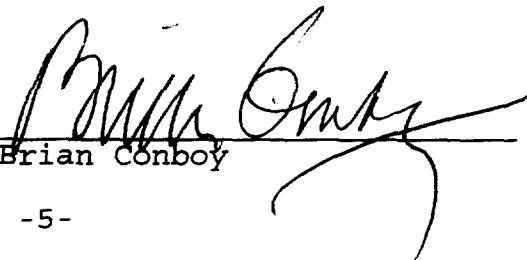
Peter D. Ross, Esq.
Donna K. Gregg
John I. Davis
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Joseph Van Eaton
Miller & Holbrooke
1225 19th St., N.W.
Washington, DC 20036

Diane S. Killory
Joan E. Neal
Morrison & Foerster
2000 Pennsylvania Ave., NW
Suite 5500
Washington, DC 20036

Mark D. Ramey
Provo Cable Co.
1013 East 590 South
Orem, Utah 84058

J. Bruce Irving
Bailey, Hunt, Jones & Busto
Courvoisier Centre, Suite 300
501 Brickell Key Drive
Miami, FL 33131-2623


Brian Conboy